

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAMES C. GARRETT,

Petitioner,

v.

ROB McKENNA,

Respondent.

CASE NO. C05-898RSM

REPORT AND RECOMMENDATION

On May 13, 2005, petitioner presented to this Court for filing a petition for writ of habeas corpus under 28 U.S.C. § 2254 in which he challenges his 2002 King County Superior Court conviction on a charge of second degree assault while armed with a deadly weapon other than a firearm.¹ The petition was subsequently ordered served on respondent and, on July 19, 2005, respondent filed an answer to the petition.

On August 10, 2005, petitioner filed a document entitled “Urgent Motion for Stay of Proceedings and Injunctive Relief Requiring Same Day Action.” Petitioner requests therein that this

¹ Petitioner is currently in the custody of the Washington Department of Corrections serving the community custody portion of his 2002 King County judgment and sentence.

1 Court enjoin King County officials from removing his name from the ballot as a candidate for Mayor
2 of the City of Seattle, and from removing his name from the list of registered voters, until this Court
3 rules on his federal habeas petition.

4 Respondent has filed a response in opposition to petitioner's motion. Respondent argues
5 therein that this Court lacks personal jurisdiction over the individuals identified in petitioner's motion,
6 that the requested injunctive relief is not available in this federal habeas action, and that, assuming the
7 requested relief is available, petitioner fails to show that he is entitled to such relief. As the record
8 makes clear that this Court has no personal jurisdiction over the King County officials named in
9 petitioner's motion, the Court need not consider respondent's remaining arguments.

10 Petitioner identifies King County Prosecuting Attorney Norm Maleng and King County
11 Director of Records and Elections Dean Logan in his motion for injunctive relief. However, neither
12 individual is a party to the instant habeas action and, thus, this Court has no authority to enjoin their
13 actions. Moreover, at this juncture, not only does the Court lack jurisdiction over the King County
14 officials identified in petitioner's motion, the Court lacks jurisdiction over the petition itself because
15 petitioner failed to name a proper respondent in his petition.

16 Petitioner named Rob McKenna, Washington State Attorney General, as the respondent in his
17 federal habeas petition. A petitioner for habeas corpus relief must name the state officer having
18 custody of him or her as the respondent to the petition. Failure to name the petitioner's custodian
19 deprives federal courts of personal jurisdiction. *Stanley v. California Supreme Court*, 21 F.3d 359,
20 360 (9th Cir. 1994)(citations omitted). The Washington State Attorney General is not petitioner's
21 current custodian. Rather, petitioner's current custodian is the individual responsible for supervising
22 his current term of community custody.

23 Give that the Court lacks jurisdiction over the individuals identified in petitioner's motion for
24 injunctive relief and, in fact, over the petition itself, petitioner's motion for preliminary injunctive relief

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1 should be denied. A proposed order accompanies this Report and Recommendation.

2 DATED this 15th day of August, 2005.

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5 MONICA J. BENTON

6 United States Magistrate Judge
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